IN THE HIIGH COURT OF HIMACHAL RADESH SHIMLA

CWP Nos. 1341 & 1459 of 2007

Date of decision: 29.10.2007

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1. **CWP No. 1341 of 2007**

Shailja Sood Petitioner

Versus

State of H.P. and ors Respondents

S/Sh. Bhuvnesh Sharma and Ramakant Sharma, counsel for the petitioner.

Mr. M.S.Chandel, Advocate General, with Mr.R.M.Bisht, DAG, for the respondent-State

2. **CWP No. 1459 of 2007**

Reena Kumari Petitioner

Versus

State of H.P. and ors. Respondents

Mr. Anup Rattan, counsel for the petitioner.

Mr. M.S.Chandel, Advocate General, with Mr.R.M.Bisht, DAG, for the respondents 1 to 3.

Mr. B.S.Verma, counsel for respondent No. 5.

S/Sh. Bhuvnesh Sharma and Ramakant Sharma, counsel for respondent No. 6.

Coram:
The Hon'ble Mr. Justice Deepak Gupta, ACJ.

The Hon'ble Mr Justice V.K.Ahuja, J.

Whether approved for reporting ?[1]

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?***

Per Deepak Gupta, ACJ.

This judgment shall dispose of the aforesaid two writ petitions which are in the nature of cross petitions.

The brief facts of the case are that the Parent Teacher Association (for short PTA) of Government Senior Secondary School, Garli, Tehsil Dehra, District Kangra, invited applications for filling up the post of Lecturer in Chemistry in the aforesaid school. Both the petitioners applied for the said post. Shailja Sood, who is petitioner in CWP No. 1341 of 2007, was selected and the President of the PTA on 18.8.2007 issued her an appointment letter appointing her as Lecturer (Chemistry) in the aforesaid school on PTA basis at a remuneration of Rs.1100/- per month. Shailja Sood submitted her joining report to the Principal on 20.8.2007. However, she was not permitted to join and thereafter she filed CWP No. 1341 of 2007. On 30.8.2007 we had passed the following directions:-

> "Keeping in view the interest of the children, we direct that in case no person is functioning as lecturer in Chemistry in Government Senior Secondary School, Garli, Tehsil Dehra, District Kangra, H.P., as on date,

the petitioner shall be permitted to join and work as such till further orders of this Court."

Reena Kumari, the petitioner in CWP No 1459 of 2007, has challenged the selection of Shailja Sood on the ground that she (Reena Kumari) is much more meritorious. It is further alleged that the selection committee did not properly assess the merit of the two and the entire selection has been made solely on the basis of the interview and not on the basis of the past academic record. At the outset we would like to point out that PTA teachers are to be appointed on the basis of selection. The interview is conducted by the Committee consisting of the President of the PTA, the Secretary of the PTA and a subject expert.

We have also perused the record and the reply field by the Principal of the school in the case of Shailja Sood. As per the stand of the respondents in CWP No. 1341 of 2007, the selection process was made during the summer vacation and there were several complaints against the selection of Shailja Sood and due to the irregularity in her selection, her joining report was not accepted. We have perused the record of the selection made in the present case and also the record of selections made in the earlier cases.

The record shows that the PTA while making some of the selections has split up the marks under the various categories and different marks have been allocated under different heads. While making the selection to the post of Physical Education Teachers, 5% marks were kept for matric, 5% for 10+2, 30% for BP Ed., 15% for MP Ed., 10% for experience, 20% for sports/written test and 15% for interview. However, in the present case the PTA did not make any selection on the basis of allocation of marks on this basis. Marks for the interview were divided into two portions; 10 marks for Chemistry and 5 marks for General Knowledge and on this basis alone without giving any weightage to the marks obtained in the qualifying exam etc., selection of Ms. Shailja Sood was made. She was given 7 marks out of 10 in Chemistry and 4 marks out of 5 in General Knowledge, whereas Ms. Reena Kumari was given 3½ marks in Chemistry and 2½ marks in General Knowledge. Otherwise the academic record of the three candidates is as follows:-

Sr. No.	Name of Candidate	Matric	10+2	B.Sc.	M.Sc.	B.Ed.
1.	Reena Kumari (Rejected)	75.20% Highest	68.80% Highest	73.83% Highest	62.80% Average	62.90% Lowest

2.	Shailja Sood Petitioner Selected	66.14% Average	52.50% Lowest	61.22% Lowest	60.87% Lowest	65.54% Average
3.	Ashu Kanwar Rejected	47.40% Lowest	66.25% Average	61.41% Average	66.75% Highest	67.36% Highest

In our considered view the selection based on 100% viva voce cannot be upheld. By now the law is well settled that even in matters of appointment to Civil Services the percentage in marks for interview should not exceed more than 15% marks.

We have, in the last few months, come across a huge number of cases where selection by the PTA has been challenged mainly on the ground that the selection is improper. The Government has not laid down any standard guidelines on which the marks should be awarded. No doubt, the Government vide letter dated 20th February, 2007 has laid down that candidates should be selected on the basis of merit by adopting an objective competitive exam basis. However, we have not come across a single case where the selection has been made on the basis of a written test. In fact we have found that normally the number of candidates applying for a post is not sufficient to warrant holding of a written test.

We, therefore, direct the respondent-State to frame guidelines for selection of teachers by the PTA. It is true that the teachers appointed by the PTA are not government servants, but as per the policy, the government has to pay ex gratia to those teachers who fulfill the requisite qualifications. In any event, the government cannot abdicate its obligation to ensure that proper education is imparted to the students. We, therefore, direct the respondent-State to frame guidelines laying down the parameters for recruitment of teachers by PTA . In view of the various judgments of the Apex Court not more than 10% marks should be kept for viva voce examination. The government may frame its guidelines on or before 31st March, 2008. Till the guidelines are framed by the government, we direct that all selections by the PTA shall be made by observing the following guidelines:-

1. The post should be advertised by issuing notice which should be pasted on the Notice Board of the school, the neighbouring 3-4 schools (minimum) and in the Panchayat Ghar of the concerned Panchayat(s). Publicity can also be given by beat of drum.
2. 10% weightage in the selection process should be for the marks obtained in matriculation, eg. If a person has 70% marks in matriculation, the person should be awarded 7 marks.

3. Similarly 10% weightage should be given for marks obtained in 10+2.
4. 20% marks should be earmarked for the marks obtained in Graduation.
5. 20% marks should be earmarked for the marks obtained in Post Graduation in the concerned subject.
6. 10% marks should be kept for those candidates who have obtained M.Phil./Phd. qualification in the subject. Any body who has qualified M.Phil or Phd. should be given 10 marks.
7. 10 marks should be kept for experience. The experience of the teaching should be in the subject concerned in a recognized school and in the classes for which the teacher is to be recruited. 2 marks for each experience can be awarded with a maximum of 10 marks for experience of 5 years or above.
8. 10 marks should be kept for extra curriculum activity, such as, taking part in sports meet, cultural festival etc. In case of a candidate who has taken part at the District level, he/she should be awarded 3 marks. In case the participation is at the State level, the candidate can be awarded 5 marks and in case the participation is at the National level, a candidate can be awarded 10 marks. The participation should be in such events/sports meet which are recognized by the University.
9. 10% marks should be kept for viva voce. The subject expert and the other two members each should separately give the marks for viva voce separately and the average of the three should then be taken.

10. In case a candidate fulfilling the minimum educational qualifications is available, the PTA shall have no right to appoint a person who does not fulfill the minimum eligibility criteria.

In the present case, as observed by us above, the PTA has appointed Ms. Shailja Sood by evolving a method of selection which was totally dependant on the marks obtained in the viva voce. This selection is totally arbitrary and illegal and the selection of Ms. Shailja Sood is accordingly set aside. The PTA of Government Senior Secondary School, Garli, is directed to ensure that fresh selection is made by following the guidelines given hereinabove latest by 28th February, 2008. However, till fresh selection is made, Ms. Shailja Sood is permitted to continue to teach in the school in question and shall be paid her salary due to her.

A copy of this judgment may be sent to the Principal Secretary to the Government of Himachal Pradesh and the Director Higher Education who shall both ensure that the same is circulated to all the Parent Teacher Associations in the State of H.P. so that the guidelines laid down by us are followed till suitable guidelines are formulated by the State in all selections

made hereafter. Any selection made in violation of the guidelines will be deemed to be illegal.

With the aforesaid directions both the writ petitions are disposed of.

(Deepak Gupta), ACJ

October 29, 2007(K) (V. K. Ahuja), J.